IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

SHELALARA VINEYARDS AND WINERY, INC., a Rhode Island Corporation, and Sheila Gold, an individual, Plaintiffs, -v- THE PURPLE CAT VINEYARD AND WINERY, INC., et al., Defendants.	Civil Action File No. 15-cv-00001-M-LDA

PLAINTIFFS' PROPOSED LIST OF ESTABLISHED FACTS

Plaintiffs Sheila Gold and ShelaLara Vineyards and Winery, Inc. (herein, "Plaintiffs"), through undersigned counsel, and pursuant to this Court's Order of February 6, 2017 (Dkt. No. 57) granting Plaintiffs' Motion for Sanctions, respectfully submit this proposed list of facts to be designated as established, which facts should be deemed established because of Defendants' non-disclosures of documents sought by Plaintiffs to prove these Facts now sought to be deemed established.

Proposed Established Fact No. 1

Defendants The Purple Cat, Daniel Ribeiro, and Andrew Gold have, in their operation of the Purple Cat, used and continue to use to their benefit ShelaLara's distribution network, the identity of ShelaLara's customers, and ShelaLara's documentation of customers' particular likes and dislikes.

Justification

The evidence by which Plaintiffs sought to prove the above-stated proposed facts would have been found in Document Request No. 7 which reads as follows and was one of the ones that this Court found to have been willfully not answered by Defendants in violation of this Court's Order:

> **Request No. 7: All financial documents related to The Purple Cat including but not limited to: accounting records, profit and loss statements, bank statements, credit card statements, deposits, forecasts, *merchant services reports, sales receipts, sales reports, ledgers, cash and credit card transactions, cash drawer reports, Purple Cat sales invoices (wholesale and retail*), invoices/statements from any and all vendors or partners, payroll records regardless of status as employee or 1099 or volunteer, trade/barter agreements, donations by or to The Purple Cat, all bills to The Purple Cat or related companies for any and all utilities, services, products, consultations including proof of payment and balances due or unpaid.**[1]

(emphasis added)

This proposed fact is highly relevant as one of the main wrongs alleged in Plaintiffs' fraud claim and misappropriation claim in the Complaint (Dkt. No 1) is that ShelaLara and Sheila Gold spent two million dollars slowly developing ShelaLara (*Id.*, Complaint, para. 19) and that part of that was the information they developed about their wine customers. It is alleged (*Id.*, para. 42) that when these defendants left ShelaLara (after promising that they would stay at ShelaLara):

> Between Andrew Gold and Ribeiro, they took the following property, equipment, trade secrets and other proprietary information when they abruptly left ShelaLara: (d) information relating to the vendors, advisors, customers, potential customers, customer preferences, and other information relating to customers learned and obtained while working at ShelaLara . . .

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[1] This information was also sought by Request for Production No. 15 which sought the following: "Request No. 15: All correspondence between you and any individual or business regarding advertising, marketing and/or promotion of The Purple Cat." While not specifically mentioned in this Court's Order allowing sanctions, it was just as equally not answered and was addressed in our motion for sanctions. *See*, Dkt. No. 54, p. 6. Under either Request 15 or Request 7, the information sought involved the proposed established fact.

Thus the information sought by Request No 7 and the proposed fact are centrally relevant.

Proposed Preclusion of Evidence of Contradictory Customer Information

As a corollary to the proposed established fact referred to above, these Defendants should be precluded for offering any contradictory evidence. They have lost that chance by their willful failure to make discovery in direct contravention of this Court's Order.

Proposed Established Fact No. 2

Defendants The Purple Cat, Daniel Ribeiro, and Andrew Gold took the following property . . . when they left the employ of ShelaLara which they have used and continue to use for the benefit of The Purple Cat:

(a) recipes and formulae relating to products developed by or sold by ShelaLara or derived from information developed or learned at ShelaLara, including fruit essence wine, frozen wine and/or wine slushies;

(b) notes and other writings relating to testing and production of the ShelaLara wine products;

(c) notes and writings which set forth step-by-step procedures for winemaking and winemaking testing, including for the frozen and/or "slushie" wine;

Justification

The evidence from which Plaintiffs sought to prove that these materials were taken from ShelaLara by these Defendants and are being used by Purple Cat would have been revealed by the materials sought in the above-quoted Request No. 7 because it would show what they were selling, which would reveal that it was all taken from ShelaLara.

This information is at the heart of the Plaintiffs' claim. They allege that they spent much time and money developing a specialty wine and that Defendant Andrew Gold took these with him when he left for ShelaLara (Complaint, paras. 21 through 23):

> 21. Andrew [Gold] managed (and acted as sole custodian of) all winemaking records, logs, recipes, winemaking procedures and schedules, equipment logs and manuals and documentation, wine inventory lists and records, records and logs of all supplies and materials and ingredients, federal and state alcohol tax records and worksheets, equipment and parts inventory, and all operations pertaining to manufacturing and maintenance of winemaking activities at the winery. All of these records were proprietary to ShelaLara and were valuable trade secrets which should not have been taken by Andrew Gold when he abruptly left in the manner described in more detail below. Nonetheless, he took these records when he left.
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> 22. The specialty wines developed at ShelaLara were its fruit essence wines. These were made by recipes developed at ShelaLara over the course of years and with funds paid by ShelaLara. The resulting wine products had a fresh-fruit taste that was very pleasing to certain customers. Further, ShelaLara discovered through its research efforts that these fruit essence wines could, at the right consistency and temperature, be frozen into "slushies" which added significantly to the marketing appeal of them. These specialty wine products were developed by ShelaLara, who paid Andrew Gold in his capacity as its winemaker to do so on its premises, with its funding, and with the understanding that these products were being developed for ShelaLara and were its exclusive property and that the recipes and ingredients could not be disclosed to others without the consent of ShelaLara, nor used by any competing winery.
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> 23. All of this information became and remains the confidential trade secret information of ShelaLara which Andrew Gold holds for ShelaLara and not for himself or for his use apart from in furtherance of the ShelaLara winemaking activities.

Once again, the information sought by Request No. 7 was to establish this very proposed fact.

Preclusion

Defendants should be precluded from offering evidence to contradict this proposed fact for the same reason explained with the above-stated Proposed Fact No. 1.

Proposed Established Fact No. 3

The earnings by Defendant Purple Cat from wine sales are from wine products made with the wine-making processes developed at ShelaLara.

Justification

This proposed fact would also be established by the information sought in Request No. 7. The complaint makes this very allegation many times when it seeks damages for, among other wrongdoing, the following conduct:

> Defendants have taken many valuable assets of plaintiffs by the misappropriation of plaintiffs' trade secrets and other confidential and proprietary information.

(Complaint, Dkt. No. 1, para. 49); also

> Defendants have violated the nondisclosure and non-use agreements entered into by Andrew Gold and Ribeiro by the misappropriation of plaintiffs' trade secrets and other confidential and proprietary information and by the unauthorized use thereof.

(Complaint, Dkt. No. 1, para. 52); also

> Defendants have taken many valuable assets including plaintiffs' trade secrets and other confidential and proprietary information and other valuable assets and this taking is a conversion of the property of ShelaLara.

(Complaint, Dkt. No. 1, para. 58)

Preclusion

Defendants should be precluded from offering evidence contradicting this proposed fact for the same reason explained with the above-stated Proposed Fact No. 1.

CONCLUSION[2]

Throughout this litigation Plaintiffs have sought patiently to establish their case by reasoned and focused discovery requests directed to these Defendants. Nothing worked, not the discovery requests themselves, nor follow-up emails and telephone calls. Fact discovery is now closed and Plaintiffs have a right to go to trial with the benefits of discovery compliance.

Dated: February 15, 2017

Respectfully submitted,

By Counsel,

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[2] As to the attorney fee claim invited by this Court, we make none. While the Court could not have known this when it entered the order inviting a statement of the reasonable attorneys' fees incurred by the effort to compel the discovery involved here, the fee arrangement between Plaintiffs and the undersigned counsel will not properly allow a fee recovery at this time. Counsel took this case on a flat rate fee with a contingency fee on any collected judgment or settlement award. Thus this effort to secure discovery compliance cannot be said to have cost the Plaintiffs additional attorneys' fees and thus we cannot, we believe, seek their recovery. The best course now, we submit, is to order the Proposed Established Facts and set this case for trial, which will finally resolve this matter either through prompting a settlement or a jury verdict.

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CERTIFICATION

I hereby certify that on this 14th day of February 15, 2017, a copy of the within document was filed through the CM/ECF system of the United States District Court for the District of Rhode Island, and will be sent electronically to all registered participants identified on the Notice of Electronic Filing. Paper copies shall be sent to all parties not listed in the Notice of Electronic Filing by regular mail, postage prepaid.

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